

Appl. No. 09/213,096
Amdt. Dated 04/26/2004
Reply to Office Action of 01/26/2004

REMARKS/ARGUMENTS

This Amendment is in response to the Office Action mailed 01/26/2004. In the Office Action, the Examiner rejected claims 9, 11, 14, and 19-22 under 35 U.S.C. § 102, and claims 1-8, 10, 12-13 and 15-18 under 35 U.S.C. § 103. Reconsideration in light of the remarks made herein is respectfully requested.

Claims 1-22 remain in this application.

Double Patenting

The Examiner rejects claims 1-22 under the judicially created doctrine of the obviousness-type double patenting as being unpatentable over claims 1-18 of copending Application No. 09/271,011 and over claims 1-20 of copending Application No. 09/271,008. The Examiner asserts that although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention of the instant application encompasses the claimed subject matters of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Therefore, Applicants acknowledge and offer submission of a terminal disclaimer to obviate the obviousness-type double patenting rejection upon allowance of the pending claims. Applicants respectfully request that the Examiner hold the obviousness-type double patenting rejection in abeyance until allowance of the pending claims.

Rejections Under 35 U.S.C. §102 and §103

In the Office Action, claims 9, 11 and 14 were rejected under 35 U.S.C. § 102(e) as being anticipated by Simmons (US 6,192,028) and claims 19-22 were rejected under 35 U.S.C. § 102(e) as being anticipated by Muller et al. (US 6,021,132). In addition, claims 1-3 and 6-8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bellenger (US 5,802,054) in view of Muller (US 6,021,132) and also claims 4-5 were rejected under 35 U.S.C. 103(a) as being

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unpatentable over Bellenger in view of Muller and Frazier (US 6,092,202) and claims 10, 12-13 and 15-18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons in view of Frazier.

Applicants respectfully traverse the rejections and reiterate the arguments presented in the previous response.

The Office Action states that "The Office Action has clearly pointed out in '028 patent, col. 7, lines 46-51, Simmons discloses the frame are received and promoted to system state as a whole, not fragmented." However, Applicants did not argue that the complete frame is received. Applicants argue that the promotion order is in accordance to a complete reception of the frame (as opposed to initial reception or partial reception). In other words, the order in which the frame is promoted to a system state is based on the complete reception of the frame. Since the frames are transmitted over a number of communication links, the time for each complete reception may be different. See Specification page 17, lines 12-18.

Simmons and Muller do not address the multiple links. In Simmons, each frame entering the switch is transmitted either to one or multiple ports (Simmons, col. 7, lines 37-44). There is no promotion of frames to a system state. The switch does not keep track of the completion of the received frames on multiple links. Similarly, Muller discloses receiving a packet on a given input port, not a plurality of frames transmitted over a plurality of communication links. In fact, Muller teaches away from the invention since the forwarding decision for a received packet is complete before the next packet arrives at that input port (Muller, col. 6, lines 48-51). Therefore, it is impossible to maintain a "relative order" and to determine an order according to complete reception of the frame.

Claim language should be interpreted consistently with the specification, which provides content for the proper construction of the claims because it explains the nature of the patentee's invention. See Renishaw, 158 F.3d 1243, 1250. Therefore, Applicants respectfully direct the Examiner's attention to the Specification on page 17 (lines 1-18) and pages 19-21, Figures 5 and 7.

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Accordingly, Applicants respectfully request that the Examiner withdraw the 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) rejections.

Conclusion

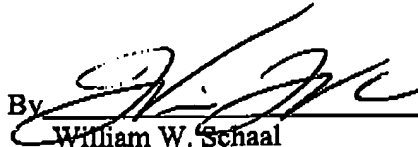
Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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By



William W. Schaal

Reg. No. 39,018

Tel.: (714) 557-3800 (Pacific Coast)

12400 Wilshire Boulevard, Seventh Floor
Los Angeles, California 90025